

## RIGHT OF WAY USE PERMIT

Legal Description of abutting property: \_\_\_\_\_

Description of permitted matter: \_\_\_\_\_

A drawing is attached hereto indicating the location of the permitted matter.

Permittee: \_\_\_\_\_

The City of Midland (hereinafter referred to as City) hereby extends this permit to the above named permittee to place the above described permitted matter on that portion of the City of Midland's right of way described above and depicted on the attached drawing. The City of Midland may unilaterally revoke this permit at any time.

In consideration herefor, the Permittee agrees as a covenant running with the land of the above described abutting premises:

1. Permittee will indemnify and hold harmless and defend the City and all of City's officers, agents and employees from all suits, actions, claims, damages, personal injuries involving accidental deaths, losses, property damages and expenses of any character whatsoever, including attorney's fees, brought for or on account of any injuries or damages received or sustained by any person or property, on account of Permittee, its agents or employees, in the execution, supervision and operations growing out of or in any way connected with the permitted matter described above, and Permittee will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including attorney's fees.
2. **PERMITTEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OF DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH PERMITTEE OR PERMITTEE'S EMPLOYEES, OR AGENTS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERMITTED MATTER DESCRIBED ABOVE AND PERMITTEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST IT OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.**
3. **TO INDEMNIFY AND HOLD HARMLESS ANY UTILITY FRANCHISED BY THE CITY OF MIDLAND FOR ANY DAMAGES SAID UTILITY MAY CAUSE TO THE ABOVE DESCRIBED PERMITTED MATTER BY REASON OF THAT UTILITY'S OCCUPATION OF THE RIGHT OF WAY;**
4. To remove or allow to be removed the above described matter at no cost to the City or any franchised utility should the City or that franchised utility have need of the right of way conflicting with the permitted matter;
5. To maintain all vegetation part of the permitted matter in a living, healthy, and safe condition;

6. To carry a general liability insurance policy that provides public liability coverage the minimum amount of \$1,000,000.00 for bodily injury to or death of one or more persons and \$250,000.00 for property damage per occurrence, which policy shall be in effect during the entire time this Right of Way Use Permit is in effect and a Certificate of Insurance from and insurance carrier licensed to conduct business in the State of Texas setting forth the amounts and types of insurance shall be submitted to the City prior to the issuance of this permit. The Certificate of Insurance shall name the Permittee as the insured and shall further name the City of Midland, Texas, as an additional insured. Self insurance or a self insurance retention does not satisfy the insurance requirements of this section, and the City will not accept self insurance or a self insurance retention for purposes of this permit.
7. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISION, PERMITTEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH PERMITTEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.**
8. The Permittee and the City acknowledge that this permit is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.
9. The Permittee acknowledges and agrees that this shall constitute a written contract between the City and the Permittee.

This permit does not relieve the permittee from the obligation of observing all applicable ordinances of the City of Midland, specifically including but not limited to the regulations of the Zoning Code and the requirement to obtain a building permit where applicable.

SIGNED AND ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

PERMITTEE:

CITY OF MIDLAND, TEXAS

\_\_\_\_\_

By \_\_\_\_\_  
City Manager or Designee

APPROVED AS TO FORM:

\_\_\_\_\_  
Keith Stretcher, City Attorney

NOTARY AFFIDAVIT

STATE OF TEXAS        }  
                                     }  
COUNTY OF MIDLAND    }

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, known to me, and on oath stated that he executed the foregoing document for the purpose and considerations therein expressed and an act and deed of the City of Midland , Texas.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS        }  
                                     }  
COUNTY OF MIDLAND    }

BEFORE ME ,the undersigned authority, personally appeared \_\_\_\_\_, Permittee, known to me, and on oath stated that he/she executed the foregoing document for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas